



Paper No. 10

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In re Application of:
Franz, *et al.*
Application No. 09/886,850
Filed: June 20, 2001
Attorney Docket No. 80398.P178C

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OFFICE OF PETITIONS

DECISION
PETITION

DISMISSING
8/24
1-30-02

I. BACKGROUND

This is a decision on the August 13, 2001 petition under 37 C.F.R. §1.10(c) requesting that the above-identified application be accorded a filing date of June 20, 2001, rather than the presently accorded filing date of June 21, 2001.

II. THE RULE

37 C.F.R. § 1.10 Filing of correspondence by "Express Mail."

(a)...

(b)...

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d)...

IV. ANALYSIS

Petitioner alleges that the application was deposited in Express Mail service on June 20, 2001. In support, the petition is accompanied by a copy of Express Mail receipt no. EL234218104US (the same Express Mail number found on the original application papers located in the official file) showing a "date in" of June 20, 2001.

However, the application in the file wrapper bears a certificate of mailing that carries the Express Mail label number EL164806463US. Accordingly, the copy of Express Mail label number EL234218104US (the one provided with this petition) is of no relevance to the issue at hand.

V. CONCLUSION

In view of the above, *this petition is dismissed.*

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10(c)".

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
Four Crystal Plaza, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.



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Office of the Deputy Assistant Commissioner
for Patent Examination Policy